

REMARKS

Claims 1-116 remain pending in the present application.

Section 121 Restriction:

In response to the Examiner's restriction requirement under 35 U.S.C. § 121, Applicants elect Invention II **with traverse**. Applicants traverse the restriction requirement on the procedural grounds that the Examiner has not stated a proper *prima facie* requirement for restriction for at least the following reasons.

The Examiner has defined Invention I as: "Claims 1-52, 77-96 and 101-113 are drawn to computer-to-computer protocol implementing, classified in class 709, subclass 230." The Examiner has defined Invention II as: "Claims 53-76, 97-100 and 114-116 are drawn to distributed data processing, classified in class 709, subclass 201." The Examiner also states that "Inventions group I and group II are related as combination and subcombination." This relationship asserted by the Examiner is not necessarily accurate. For example, claim 1 (in group I) is directed to a peer computing system comprising a plurality of peer nodes. Claim 36 (also in group I) is directed to just a single peer node. Claim 53 (in group I) is directed to a single peer node, whereas claim 55 (also in group II) is directed to a peer computing system comprising a plurality of peer nodes. While it might be appropriate to consider a peer computing system to be a combination and a single peer node to be a subcombination, the Examiner has not followed this relationship his grouping of the claims. For example, both group I and group II include claims directed toward a single peer node, claims 36 and 53 respectively. As described in Applicants' disclosure, one peer node is not necessarily a subcombination of another peer node. Thus, the Examiner's asserted relationship of combination and subcombination does not necessarily apply to the way the Examiner has grouped the claims. Accordingly, the restriction requirement is improper.

As explained in more detail below, the Examiner has also failed to state proper reasons for requiring restriction.

As a reason for requiring restriction, the Examiner states that “the combination as claimed [group I] does not require the particulars of the subcombination as claimed [group II] because it distinctly relates protocol implementing.” While various ones of Applicants’ claims may be patentably distinct from other ones of Applicants’ claims, it is the Examiner’s burden to provide proper reasons for requiring restriction. By simply stating that the combination as claimed “distinctly relates protocol implementing” the Examiner has not met his burden to provide proper reasons for requiring restriction. For example, claim 1 (group I) recites “one or more peer-to-peer platform protocols for enabling the plurality of peer nodes to discover each other” and claims 53 (group II) recites “wherein said discovering and accessing the instance of the service are performed in accordance with one or more peer-to-peer platform protocols”. Thus, claims from both group I and group II relate to protocol implementing. While there may be patentable distinctions between the claims of group I and group II, the Examiner has clearly not met his burden to establish a valid reason for requiring restriction.

Furthermore, according to M.P.E.P. § 806.05(c) “[t]he burden is on the examiner to suggest an example of separate utility.” In an apparent attempt to meet this burden, the Examiner states that “[t]he subcombination has separate utility such as distributed data processing.” However, from even the most cursory reading of Applicants’ claims and disclosure, it is blatantly clear to anyone of ordinary skill in the art that the invention recited in all of Applicants’ claims can be used for distributed data processing. The Examiner has simply stated a utility applicable to all of the claims. Therefore, the Examiner has clearly failed to meet his burden to show a separate utility.

Finally, to establish a proper restriction requirement, the Examiner must show “reasons why there would be a serious burden on the examiner if restriction is not required”. M.P.E.P. § 808. The Examiner failed to assert any reason whatsoever as to why there would be a serious burden on the Examiner if restriction is not required.

Therefore, the Examiner has failed to state a proper *prima facie* requirement for restriction.

If the Examiner's intention was to rely upon separate classifications to establish a serious burden, such reliance would be misplaced since the stated classifications are not separate. For example, the Examiner states that Invention I is classified as class 709, subclass 230 and that Invention II is classified as class 709, subclass 201. However, these classifications could both be applied to all of the claims. According to the Manual of Classification, the definition of class 709, subclass 230 is for computer-to-computer protocol implementing and the definition for class 709, subclass 201 is for distributed data processing. As shown above, all of Applicants' claim relate to protocol implementing and can also all be applied to distributed data processing. Therefore, the Examiner has not shown separate classifications. Since the purported classifications actually relate to all of the claims, the Examiner cannot rely upon these classifications to establish "a serious burden on the examiner if restriction is not required." *See* M.P.E.P. § 808. Since the Examiner's has failed to give any valid reason for establishing a "serious burden", Applicants' assert that the Examiner has not established all of the necessary elements of a *prima facie* restriction requirement. Therefore, the Examiner's restriction requirement must be withdrawn.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-06800/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Other:

Respectfully submitted,



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